DAMAGES.—EXCESSIVE.—Deceased, a railroad telegraph lineman, fifty-three years of age, earning a salary of seventy-five dollars per month, was killed by the negligent derailment of one of the defendant's locomotives while riding in the same in the discharge of his duties. In an action for damages by his widow and two daughters the jury awarded twenty-two thousand dollars. *Held,* that as the deceased was a healthy, strong and competent workman the amount awarded was not excessive. *Freeman* v. *McElroy et al.* (1910), — Tex. Civ. App. —, 126 S. W. 657.

The amount of damages recoverable for death should be a just compensation with reference to the pencuniary injury resulting to the beneficiaries. *Hillebrand* v. *Standard Biscuit Co.,* 139 Cal. 233; *Howard* v. *Delaware etc. Canal Co.,* 40 Fed. 195, 6 L. R. A. 75; *Pierce* v. *Conners,* 20 Col. 178. The rule seems to be well recognized that in an action for the wrongful death of a parent, the loss to the minor children of instruction, and physical, intellectual and moral training by such parent, is a proper element to be considered in estimating the damages where it is shown that the deceased was a dutiful parent, of industrious habits and good character. *Kansas Pacific R. R. Co.* v. *Miller,* 2 Col. 442; *Walker* v. *Lake Shore etc. R. R. Co.,* 111 Mich. 518; *Stoehr* v. *St. Louis etc. R. R. Co.,* 91 Mo. 509; *Sternfels* v. *Metropolitan Street R. R. Co.,* 174 N. Y. 512; *Galveston etc. R. R. Co.* v. *Davis,* 27 Tex. Civ. App. 279. Damages in cases of this character are not susceptible of exact mathematical computation and specific proof of all the various items of pecuniary damage is not always requisite. It is sufficient to show facts and circumstances from which the jury may infer pecuniary loss. *Ill. Cent. R. R. Co. v. Spence,* 93 Tenn. 173; *Lockwood* v. *N. Y. Railroad Co.,* 98 N. Y. 523. There is no fixed rule to determine what amount of damages should be allowed in this class of suits. The question is peculiarly one for the jury. *Louisville etc. R. R. Co.* v. *Morgan,* 114 Ala. 449, 22 South 20; *Kansas Pacific R. R. Co.* v. *Miller,* supra; *Missouri Pacific R. R. Co.* v. *Peregoy,* 36 Kan. 424. But the jury is not unlimited in its discretion and where it is apparent that it has been abused by the awarding of a sum all out of proportion to the injury sustained a court of review will set the finding aside. *Penn. R. R. Co.* v. *Zebe,* 33 Pa. St. 318. But, as the principal case here indicates, courts are very slow to invade the province of the jury.

DEEDS—GRANTEE A DECEASED PERSON.—One E. D. Plank, deceased, by his will made his son, the defendant E. S. Plank, his executor, and bequeathed to him the residue of his estate, charged with the support of the mother. The residue included a $3000 mortgage, given by the Eachors upon 120 acres of land, contiguous to 80 acres upon which the plaintiffs held a mortgage, executed by the Eachors to M. Plank, and assigned by him to the plaintiff, the assignment being unrecorded. Defendant bought the 200 acre Eachor farm, part of it in substitution of the $3000 mortgage held by the estate, and that this part might stand specifically charged with the mother's right, 120 acres were conveyed directly into the same title as the mortgage had been held, by a warranty deed from the Eachors to E. D. Plank, his heirs and assigns. This 120 acres included the 80 acres covered by the mortgage

held by the plaintiff. The remaining 80 acres of the 200 acres were conveyed by warranty deed directly to the defendant, E. S. Plank, who gave a release of the mortgage held by the estate, and paid $1800 in addition, which M. Plank agreed should be a discharge of the mortgage made by the Eachors to him, and assigned by him to the plaintiff, without the defendant's knowledge. M. Plank then executed a release of this mortgage to the Eachors. In an action by the plaintiff to have its mortgage foreclosed, *Held,* that although the deed by the Eachors of the mortgaged property was made to a deceased person as grantee, the parties evidently intended that the executor should take, and this intention will be effectuated by enforcing the deed in favor of the executor. *City Bank of Portage* v. *Plank,* (1910), — Wis. —, 124 N. W. 1000.

A conveyance to a fictitious person is void. *Muskingum Turnpike C.* v. *Ward,* 13 Ohio 120, 42 Am. Dec. 191; *David* v. *Ins. Co.,* 83 N. Y. 265, 38 Am. Rep. 418. For a person not in being cannot be the grantee of an immediate estate. Thus a grant to a person, deceased at the time of the deed's execution, is void. *Neal* v. *Nelson,* 117 N. C. 393, 53 Am. St. Rep. 590; *Hunter* v. *Watson,* 12 Cal. 363, 73 Am. Dec. 543. But by statute in Kentucky the heirs take under a grant to a deceased person. *Northern Lake Ice Co.* v. *Orr,* 102 Ky. 586. Any real person, however, may be a grantee under a fictitious or assumed name. *Scanlan* v. *Grimmer,* 71 Minn. 351, 70 Am. St. Rep. 326; *Wilson v. White,* 84 Cal. 239, 24 Pac. 114; *Chapman* v. *Tyson,* 39 Wash. 523, 81 Pac. 1066. The decision in the principal case would seem to find support in this class of cases, and especially from *Chapman* v. *Tyson,* where the grantee assumed the name of his infant son. But that a deed to the estate of a deceased person is void see *Simmons* v. *Spratt,* (Fla.) 1 South. 860; *McInerney* v. *Beck,* 10 Wash. 515, 39 Pac. 130.

DIVORCE—ENFORCEMENT OF ORDER ALLOWING ALIMONY PENDENTE LITE.—Margaret Kapp sued Charles Kapp for divorce. An order was made requiring the defendant to pay $200 a month as temporary alimony. He failed to comply with this order and Margaret Kapp filed a petition reciting the order, the non-payment, the amount unpaid, defendant's refusal to pay, and praying for judgment that the plaintiff have execution against property of the defendant. This judgment was allowed and the present suit is certiorari by Chas. Kapp against the lower court to review the order. *Held,* order and judgment annulled; plaintiff could not have execution to enforce the payment of alimony *pendente lite. Kapp* v. *Seventh Judicial District Court et al.* (1910), — Nev. —, 107 Pac. 95.

A decree for permanent alimony is a judgment enforceable by execution like any other final judgment. *Taylor* v. *Gladwin,* 40 Mich. 232; *Hoffman* v. *Hoffman,* 55 Barb. (N. Y.) 269; *Howard* v. *Howard,* 15 Mass. 196. A mere interlocutory order, cannot be enforced by execution. *Devlin* v. *Hinman,* 57 N. Y. Supp. 663, aff'd 161 N. Y. 115. Following the above rule, an order for the payment of alimony *pendente lite,* being an interlocutory order, cannot be enforced by execution. *Ford* v. *Ford,* 41 How. Pr. (N. Y.) 169; *Groves's Appeal,* 68 Pa. St. 143. Such an order, though, has been enforced by execution where the statute expressly permits it. ***Halsted* v. *Halsted,* 47 N. Y.**